

BOARD OF APPEALS CASE NO. 5031

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BEFORE THE

APPLICANT: Melanie Breeden

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ZONING HEARING EXAMINER

**REQUEST: Special Exception and
variance to locate a day care center in
the CI District and disturb the NRD buffer;
203 Bynum Road, Forest Hill**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/5/00 & 4/12/00

HEARING DATE: May 24, 2000

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Record: 4/7/00 & 4/14/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Melanie Breeden, is requesting a Special Exception pursuant to Section 267-53C(4)(b) of the Harford County Code to permit the operation of a Day Care Center in a CI/Commercial Industrial District, as well as a variance to Section 267-41D(5)(e) and (6) of the Code to permit disturbance of fifteen (15) feet of the required seventy-five (75) foot Natural Resource District buffer [a sixty (60) foot buffer would remain].

The subject property is located at 203 Bynum Road, Forest Hill, in the Third Election District. The parcel is more specifically identified as Parcel 0066, in Grid 3F, on Tax Map 40. The property contains approximately 5.4 acres, all of which is zoned CI. The owners of the property are Aref Talanehzar and Mosour Seyour, 1329-A Belair Road, Bel Air.

Ms. Melanie Breeden, 2209 Hunters Chase, Bel Air, appeared and testified that she is in the process of purchasing the subject property in order to build a 4300 square foot child care center. She has plans to be licensed to care for 80 children per day. According to Ms. Breeden, traffic to and from the facility would be limited to morning and afternoon, with no traffic on weekends. It was Ms. Breeden's testimony that there would be easy traffic flow both in and out of the facility. She indicated that the child care center would be a benefit to the community in that there is only one other center in the area, and there is a great demand for child care because of the number of children in the community. Ms. Breeden stated that the center would be operated from 6:30 a.m. to 6:30 p.m., Monday through Friday, with approximately twelve staff members on site. Fifteen parking spaces would be provided, and the access would be via a circular drive that would provide a two-way entrance and exit. There would be no cooking other than that which would be done for snacks on a small stove.

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It was stated in her testimony that there are no safety issues which would need to be addressed. Ms. Breeden described the area around the proposed facility as including an antique store to the left of the parcel, residential housing further up the street, with a pond and additional residential development located across the street. The signage for the facility would be low to the ground, of brick material, with a small spotlight shining low on the sign. There would be safety lighting located near the building.

Ms. Breeden further testified that she is seeking the variance to disturb the Natural Resource District buffer in order to provide a larger, grass area for the children's playground. She indicated that nothing would be built within the buffer, it would just be additional grass area on which the children would play. Ms. Breeden stated that she would comply with those conditions recommended by the Department of Planning and Zoning in its Staff Report, which included submitting a detailed site plan for review and approval through the Development Advisory Committee, as well as a detailed landscaping/mitigation plan for the site, and directing all lighting downward and away from adjacent residential areas.

Mr. Al Bigdeli, 1004 Jackson Boulevard, Bel Air, a licensed architect, was next to appear and testify. Mr. Bigdeli is employed by Design Alliance Architects of 4800 Roland Park, Baltimore, and has been retained to design the proposed child care facility. Mr. Bigdeli testified that the center will be designed to occupy approximately 2.135 acres, or twenty-four (24%) percent of the lot. The proposed building would be 4300 square feet, all contained within a one (1) story structure. The building will comply with National Fire Protection Agency requirements, with a brick and wood frame, and fully sprinkled. He is still in the process of determining the best site for the building on the lot, as it is preferable to build on the flattest section of the lot, and leave additional room for an expanded play yard.

Mr. Anthony McClune, Manager, Division of Land Use Development for the Department of Planning & Zoning, testified on behalf of the Department of Planning and Zoning. Mr. McClune addressed the requirements of the Harford County Code with regard to a special exception request of this nature. According to Mr. McClune, access to the facility must be from a public road, and Bynum Road is a public collector road in the County's transportation plan, which meets the special exception criteria.

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The outdoor play area would have to be fenced and screened by trees at least six (6) feet high. An emergency evacuation plan would have to be prepared and presented prior to the DAC hearing and prior to the opening of the facility. It was Mr. McClune's testimony that there are no adjacent uses that would be adversely impacted by the proposed special exception, and the nearest industrial use, namely Bynum Industrial Park, is a good distance away from the site.

In addition, Mr. McClune summarized the Staff Report prepared by the Department, noting the following: there has been significant residential growth in the immediate area of the proposed facility and the child care center would provide a necessary service to the adjacent residential neighborhoods; the proposed use would generate less traffic than could be expected from other uses permitted with the CI District, although he did indicate that no formal traffic study had been done regarding this proposal; the use is compatible with surrounding neighborhoods; the facility should produce no odors, gas, smoke, glare, noise, etc. which would adversely impact surrounding properties; there are adequate police, fire protection, sewer, water, and trash removal facilities available to service the proposed facility; the proposal can meet the purposes and requirements of the Code; there would be no adverse impact from the facility on any schools, houses of worship or other public institutions or facilities; there should be no negative impact to the environment, including the Natural Resource District, from the proposed use, and there are no cultural or historic landmarks in the area which would be affected. Accordingly, the Department of Planning and Zoning recommended approval of the special exception use.

Mr. McClune also testified that the Department recommended approval of the Applicant's variance request to reduce the NRD buffer from 75 to 60 feet to allow an expanded play area for the children. This recommendation was based upon the fact that the area would only be used for play on the grass; there would be no impervious surfaces or equipment placed within the buffer. It was Mr. McClune's testimony that the area is currently an overgrown field, and that most of the mature vegetation should be able to be maintained.

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Mr. McClune also noted that, because of the NRD, the buffer and other natural features of the property, the area available for construction on the property is limited, making the property unique. For this reason, as well as the lack of any adverse or detrimental impact to the NRD, the Department recommended approval of the variance request as well.

Two neighbors appeared to express their concerns regarding the proposal. Mr. Peter Hamilton, 210 Marshall Drive, Forest Hill, was concerned about increased drainage from the property which would potentially drain directly into his yard. Mr. McClune responded to Mr. Hamilton noting that the facility would have to comply with all Code requirements regarding stormwater management. Mr. John Collins, 295 Tomato Court, Forest Hill, testified regarding his concerns as to the effect any proposed lighting of the facility would have on the enjoyment of his property, as well as concerns regarding the additional traffic which would be generated on Bynum Road, which he felt was already burdened by heavy traffic. He also echoed Mr. Hamilton's concern regarding water runoff.

CONCLUSION:

The Applicant is requesting a Special Exception pursuant to Section 267-53C(4)(b) of the Harford County Code to allow a day-care/child-care center in a CI District, and a variance pursuant to Section 267-41D(5)(e) and (6) of the Code to disturb the 75 foot Natural Resource District buffer by fifteen feet, (a sixty foot buffer is proposed) in order to expand the grassy area available for a children's play yard.

Section 267-53C(4)(b) of the Harford County Code provides:

These uses may be granted in the CI, LI and GI Districts, provided that:

- [1] Access to the facility shall be from a public road;
- [2] In order to minimize children's exposure to noise and other emissions from roads, parking areas and industrial activities, the facility's outdoor play area shall be fenced and shall be screened with a combination of evergreen and deciduous trees that are at least six feet high;
- [3] Before opening the facility, its operator shall file emergency evacuation and sheltering plans for the facility with the Emergency Operations Division and the three closest volunteer fire and ambulance companies; and

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- [4] The Board may deny an application if the proposed facility would be located near an industrial use that constitutes a potential hazard to the children in the facility.**

Based upon the evidence presented at the hearing in the way of testimony and documentary evidence, the Hearing Examiner finds that the Applicant can meet the requirements set forth in the Code for this Special Exception use. Specifically:

- 1. The proposed access to the facility is from Bynum Road, which is a public road (a collector road) as designated in the County transportation plan;**
- 2. The Applicant has agreed to prepare and comply with a site and landscaping plan which will include an outdoor play area that is fenced and screened with a combination of evergreen and deciduous trees that are at least six feet high;**
- 3. The Applicant has agreed to prepare, file and comply with an emergency evacuation and sheltering plan for the facility; and,**
- 4. The proposed facility is not located in close proximity to an industrial area or use which would constitute a potential hazard to the children attending the child-care center.**

In addition to the specific requirements of the Code, a Special Exception may not be granted unless consideration is given to the “Limitations, Guides and Standards” set forth in Section 267-9I of the Code as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

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- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.”**

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With regard to the standards noted above, the Hearing Examiner finds that there is no persuasive evidence to support a determination that the proposed use would adversely affect the public health, safety and general welfare, nor did the evidence demonstrate that the proposed child-care center would create dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. Rather, the evidence supports the following findings:

1. The immediate area has experienced significant residential growth that has created a demand for the services that the proposed child-care center would provide;
2. The proposed facility will have parking facilities and road access that meet the requirements of the Code;
3. The proposed use will not interfere with the orderly growth of the neighborhood and community, nor would it have a negative fiscal impact on the county. On the contrary, it would appear to provide a needed service in a growing residential area;
4. The proposed use should not produce any odors, dust, gas, smoke, fumes, vibration, glare or noise which would interfere with the surrounding properties;
5. Adequate facilities and services are available for police, fire protection, sewerage, water, and trash collection and disposal;
6. The Special Exception use, as proposed, is consistent with the Master Plan and can meet the requirements for the particular use in its zoning district;
7. There are no structures or facilities for public use in the vicinity which would be adversely affected by the proposed child-care center;
8. The proposed use is consistent with the purposes set forth in the Code, the Master Plan and applicable related studies;
9. The proposed use would not appear to have any negative environmental impacts, nor would it interfere with opportunities for

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recreation or open space or the preservation of cultural and historic landmarks.

Based upon the above findings, the Hearing Examiner is satisfied that the Applicant has met the requirements of the Code for a Special Exception in the instant case.

As a matter of law, in addition to the specific requirements for a special exception use set forth in the Harford County Code, the Maryland Court of Appeals has set forth the basic test which must be addressed when such requests are filed. As stated in the case of Schultz v Pritts, 219 Md. 1. 432 A.2d 1319 (1981):

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge *whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case in is harmony with the general purpose and intent of the plan..*”
(Emphasis added)

Id. at 11-12.

The Court further held that the test for determining the existence of a sufficient “adverse effect” to justify a denial of a request is “...whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz, 291 MD. At 15, 432 A.2d at 1327.

Based upon the evidence and the findings noted above, the Applicant’s proposed use meets the test articulated in Schultz - there are no adverse effects demonstrated which would be any greater in this location than would be present at any other location in a CI zone.

As to the Applicant’s request for a variance to decrease the required buffer in a Natural Resource District to sixty (60) feet, 15 feet less than required, Section 267-41D(5)(e) and (6) of the Harford County Code state:

“Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.”

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Section 267-41(D)(6) provides:

“Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”

The evidence presented demonstrates that the expansion of the proposed play yard into the required wetlands buffer will not adversely affect the Natural Resources District. Both the testimony of the Applicant and the Department of Planning and Zoning, as well as the proposed site plan, indicate that there will be no building construction, imposition of impervious surfaces or playground equipment placed within the buffer. Rather, the Applicant is proposing to leave the area in grass to provide additional yard for the children’s play. The proposed fencing which would be required would have purely minimal if any negative effect upon the NRD area.

No comments in opposition were received from the Soil Conservation Service or the Maryland Department of the Environment, and the Department of Planning and Zoning has recommended approval of the variance request based upon its determination that there would be no negative impact to the NRD or the environment. Accordingly, it is the finding of the Hearing Examiner that the proposed fifteen foot encroachment into the buffer will not adversely affect the Natural Resources District and the variance should be approved.

Therefore, based upon the findings set forth above, it is the recommendation of the Hearing Examiner that the Applicant’s requests for a Special Exception and a variance be approved, subject to the following conditions:

- 1. The Applicant shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC);**
- 2. The Applicant shall submit to the Department of Planning and Zoning for review and approval a detailed traffic flow plan, showing the path of vehicle traffic onto the site for drop-off and pick-up, and including a plan for prevention of traffic back up onto Bynum Road, particularly during peak traffic hours;**

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3. The Applicant shall submit a detailed landscaping/mitigation plan for the site, including areas around the parking lot, building and within the reduced buffer area, such plan to include placement of evergreen and deciduous trees at least six feet high to screen the outdoor play area;
4. All lighting shall be directed downward and away from adjacent residential areas;
5. The Applicant shall file emergency evacuation and sheltering plans with the Emergency Operations Division and the three (3) closest volunteer fire and ambulance companies prior to opening the facility; and,
6. The Applicant shall obtain all necessary permits, and inspections and licenses.

Date JULY 21, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**